

# **EXHIBIT 3**

**Kohlberger, Jennings**

**From:** Marina, Lana C.  
**Sent:** Monday, October 17, 2005 2:44 PM  
**To:** Kohlberger, Jennings  
**Subject:** FW: Google Inc. v. Froogles; CV-05-1779(TCP)(ETB); Our Ref. No. 246.1

-----Original Message-----

**From:** Manavinder S. Bains [mailto:msbains@powleylaw.com]  
**Sent:** Wednesday, September 28, 2005 8:12 PM  
**To:** Marina, Lana C.  
**Cc:** Richard, Virginia; Bridges, Andrew; Robert L. Powley; Nancy Juetta  
**Subject:** RE: Google Inc. v. Froogles; CV-05-1779(TCP)(ETB); Our Ref. No. 246.1

Dear Lana:

Thank you for your email. Please pardon my late response to your email, but I was out of the office at a client meeting.

Kindly note that although non-confidential documents were produced today, we are willing to produce confidential documents, provided that such documents are treated as "CONFIDENTIAL - ATTORNEYS' EYES ONLY" until the protective order is finalized and entered by the Court. We would be willing to treat Googles' production of confidential documents in the same manner prior to the entry of the protective order. Please advise whether this proposal is acceptable.

As for the protective order, while we agree that the word "materials" may need to be inserted in a few places as a matter of context, we submit that it should not be capitalized or part of the designation. The designation of "CONFIDENTIAL" should, after all, be as uniform as possible.

With respect to our changes to Para. 1 of the redlined protective order, we disagree with your rationale, and your assertions respecting our client.

As for our deletion of Para. 4 (A) (1) in Para. 4 (B) (3) in the redlined protective order, please note that Para 4. (A) (1) in the order you submitted states as follows:

**Attorneys representing the parties hereto, including in-house counsel, and including employees (such as paralegals, secretaries, associates, clerical workers and practitioners) of those attorneys actively engaged in this litigation.**

Prior to our deletion of Para. 4 (A) (1) in Para. 4 (B) (3), Para. 4 (B) (3) stated that:

**The parties expressly agree that the persons identified in paragraphs ~~4 (A) (1)~~ and 4(A) (2) above shall not have access to any CONFIDENTIAL - ATTORNEYS' EYES ONLY [emphasis added].**

For the purposes of clarity, we believe that the deletion of Para. 4 (A) (1) in Para. 4 (B) (3) is therefore appropriate.

If the above issues cannot be simply agreed to between the parties, perhaps it will be necessary to go before Magistrate Judge Boyle. Thank you in advance. We look forward to your comments.

Kind regards.

Manavinder S. Bains

10/17/2005

Law Office of  
Robert L. Powley  
pc



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Law Office of Robert L. Powley, P.C., 417 Canal Street, 4th Floor, New York, New York 10013.

-----Original Message-----

**From:** Marina, Lana C. [mailto:LMarina@winston.com]

**Sent:** Wednesday, September 28, 2005 3:20 PM

**To:** Manavinder S. Bains

**Cc:** Richard, Virginia; Bridges, Andrew; Robert L. Powley; Nancy Juetta

**Subject:** Spam RE: Spam RE: Spam RE: Spam RE: Spam RE: Google Inc. v. Froogles; CV-05-1779(TCP)(ETB); Our Ref. No. 246.1

Dear Manavinder:

We are sending a courier to your offices this afternoon to pick up Defendant's document production. Please advise if Defendant's confidential documents are being produced today.

Your changes to the Protective Order are for the most part rejected. First, we reject your revised and narrowed definitions of CONFIDENTIAL and CONFIDENTIAL - ATTORNEYS EYES ONLY. As Mr. Wolfe is an individual, he does not share the same level of concern to protect the confidentiality of highly sensitive business records as a publicly traded company. Moreover, Mr. Wolfe does not maintain the same volume or nature of records as Google. Accordingly, the disclosing party must have the right to determine what records are designated CONFIDENTIAL and what records require a higher level of protection, and should not be bound by your arbitrary determination of what types of materials are entitled to a higher level of protection. As Mr. Wolfe is a direct competitor of Google, Google is naturally concerned regarding the prospective disclosure of valuable, highly sensitive or technical business records to him which he could use to develop his own business, and which may not fall within your arbitrary definitions. The parties are equally well-served by providing that each may unilaterally determine what sensitive materials must be restricted to trial counsel of record. Accordingly, your proposed changes to paragraph 1 are rejected.

Second, our use of the defined term MATERIAL in the proposed Order is entirely consistent. Your proposed changes, however, render the Order unintelligible. See, e.g., your proposed changes to:

Paragraph 4(a): "Except as otherwise permitted by this Order, access to and disclosure of CONFIDENTIAL (sic) shall be limited by the receiving party to . . .";

Paragraph 4(a)(2): "To the extent that either party hereto, after the date of execution hereof, designates any such employees who shall have access to CONFIDENTIAL (sic), the designating party shall identify such employees . . . Each party hereto represents that every individual (including corporate officers, identified

employees and their respective secretaries) given access to CONFIDENTIAL pursuant to the terms of this paragraph has been (or will be prior to receiving CONFIDENTIAL (sic)) informed of the terms of this Protective Order and has agreed (or will agree prior to receiving CONFIDENTIAL (sic)) to be bound by its terms and conditions. . ."; and

Paragraph 4(b): "Except as otherwise permitted by this Order, access to the disclosure of CONFIDENTIAL - ATTORNEYS' EYES ONLY (sic) shall be limited by the receiving party to . . ."

Accordingly, your deletion of the noun "MATERIAL" throughout the proposed order is not acceptable.

Third, we do not understand your comment that our original draft prohibits attorneys from reviewing CONFIDENTIAL - ATTORNEYS' EYES ONLY MATERIAL. Paragraph 4(b) specifically provides:

Except as otherwise permitted by this Order, access to the disclosure of CONFIDENTIAL - ATTORNEYS' EYES ONLY MATERIAL shall be limited by the receiving party to:

- (1) trial counsel of record for such party;
- (2) attorneys, law clerks, paralegals, secretaries and clerical workers employed by such trial counsel . . .

Paragraph 4(b)(3) of our proposed draft distinguishes between trial counsel of record for a party and other attorneys retained by a party who are not directly involved in this case, such as Mr. Wolfe's personal estate attorney or other in-house attorneys. Our draft provides that CONFIDENTIAL - ATTORNEYS' EYES ONLY MATERIAL is restricted to trial counsel of record. Accordingly, your interpretation of this paragraph is wrong, and your change is not acceptable.

Fourth, your proposed paragraph 6 was evidently copied from some other case, as it does not use the defined terminology set forth in the order. Moreover, the language of paragraph 6 is vague and unworkable, such as "if the receiving party is actually aware of such fact." Accordingly, your new paragraph 6 is rejected.

We will accept your changes to paragraphs 12 and 13. Your changes are otherwise rejected.

--Lana Marina

-----Original Message-----

**From:** Manavinder S. Bains [mailto:msbains@powleylaw.com]

**Sent:** Tuesday, September 27, 2005 8:05 PM

**To:** Marina, Lana C.

**Cc:** Richard, Virginia; Bridges, Andrew; Robert L. Powley; Nancy Julette

**Subject:** RE: Spam RE: Spam RE: Spam RE: Spam RE: Google Inc. v. Froogles; CV-05-1779(TCP)(ETB); Our Ref. No. 246.1

Dear Lana:

As mentioned in our prior email, we reiterate that the check is payable to our office. Our firm name is below (and of course, on all correspondence and pleadings submitted by our office in connection herewith).

As for the protective order, please note the following:

1. The majority of the proposed revisions clarify issues pertaining to the identification, designation and production of confidential materials.

10/17/2005

2. The proposed redline addresses spelling and grammatical errors in the protective order previously submitted by your office.
3. The proposed redline addresses inconsistency in the designation of confidential documents as "CONFIDENTIAL MATERIALS," or "CONFIDENTIAL" in the order submitted by your office. For the purposes of clarity, this designation is corrected throughout the order by the uniform designation of "CONFIDENTIAL."
4. Our office's revision of Para. 4 (B) (3) of the order submitted by your office enables attorneys representing the parties to view documents designated "CONFIDENTIAL-ATTORNEYS' EYES ONLY." Your office's protective order, as drafted, prohibits attorneys representing the parties from reviewing documents designated "CONFIDENTIAL- ATTORNEYS' EYES ONLY."

Insofar as the foregoing revisions (and others delineated in the redline), speak for themselves, it appears that you have not reviewed the same. The redline was merely sent as a courtesy in an attempt to facilitate a productive discussion of the above.

Simply submitting the protective order drafted by your office without addressing the foregoing (and other) issues would be premature and would accordingly not be in the best interest of the parties.

We therefore ask yet again that you provide comments on the redline previously submitted to your office.

Cordially,

Manavinder Bains

Law Office of  
Robert L. Powley  
pc



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-----Original Message-----

**From:** Marina, Lana C. [mailto:LMarina@winston.com]

**Sent:** Tuesday, September 27, 2005 3:05 PM

**To:** Manavinder S. Bains

**Cc:** Richard, Virginia; Bridges, Andrew

**Subject:** Spam RE: Spam RE: Spam RE: Spam RE: Google Inc. v. Froogles; CV-05-1779(TCP) (ETB); Our Ref. No. 246.1

Dear Manavinder:

Please let us know immediately to whom the check should be made payable. We will send a courier to your offices with the check in hand this afternoon.

We disagree that your changes are self-explanatory, which is why we asked for an explanation. We do not understand the basis for your proposed changes. If there is no basis for your proposed changes, then Defendant has no basis upon which to object to the Magistrate's entry of the order as originally drafted.

--Lana Marina

-----Original Message-----

**From:** Manavinder S. Bains [mailto:msbains@powleylaw.com]

**Sent:** Tuesday, September 27, 2005 1:36 PM

**To:** Marina, Lana C.

**Cc:** Richard, Virginia; Bridges, Andrew

**Subject:** RE: Spam RE: Spam RE: Spam RE: Google Inc. v. Froogles; CV-05-1779 (TCP)(ETB); Our Ref. No. 246.1

Dear Lana:

Thank you for your email. Please note that Defendant's non-confidential and non-privileged documents are available for your office. Please arrange for retrieval of such documents at our office. Plaintiff's copying costs for such documents are \$104.58. Accordingly, please also arrange for the delivery of a check in the same amount payable to our office, prior to, or contemporaneously with the retrieval of the aforementioned documents.

As for the proposed changes in the protective order, please note that such changes are self-explanatory. Please provide your specific comments and concerns. Thank you.

Manavinder S. Bains

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-----Original Message-----

10/17/2005

**From:** Marina, Lana C. [mailto:LMarina@winston.com]  
**Sent:** Tuesday, September 27, 2005 12:42 PM  
**To:** Manavinder S. Bains  
**Cc:** Richard, Virginia; Bridges, Andrew  
**Subject:** Spam RE: Spam RE: Spam RE: Google Inc. v. Froogles; CV-05-1779 (TCP)(ETB); Our Ref. No. 246.1

Dear Manavinder:

Please identify the reasons for each of your proposed changes to the protective order so that we can address your concerns.

In addition, unless we receive Defendant's production of non-confidential and non-privileged documents by 3 p.m. tomorrow, we will seek the intervention of the Magistrate Judge.

--Lana Marina

-----Original Message-----

**From:** Manavinder S. Bains [mailto:msbains@powleylaw.com]  
**Sent:** Monday, September 26, 2005 6:41 PM  
**To:** Marina, Lana C.  
**Cc:** Richard, Virginia; Bridges, Andrew  
**Subject:** RE: Spam RE: Spam RE: Google Inc. v. Froogles; CV-05-1779(TCP)(ETB); Our Ref. No. 246.1

Dear Lana:

Thank you for your email. We disagree with your assessment of the protective order in its earlier form. The proposed revisions which our office respectfully submitted for your and your colleague's review meaningfully clarify the order. Further note that the proposed revisions address inconsistencies in the protective order originally provided.

In an effort to advance this matter, we look forward to receipt of your comments.

Cordially,

Manavinder S. Bains

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 New York, New York 10013.

-----Original Message-----

**From:** Marina, Lana C. [mailto:LMarina@winston.com]  
**Sent:** Monday, September 26, 2005 4:45 PM  
**To:** Manavinder S. Bains  
**Cc:** Richard, Virginia; Bridges, Andrew  
**Subject:** Spam RE: Spam RE: Google Inc. v. Froogles;  
 CV-05-1779(TCP)(ETB); Our Ref. No. 246.1

Dear Manavinder:

We have now had the opportunity to review your proposed changes to the Stipulated Protective Order. Your changes are unacceptable. Our draft is a standard protective order which has been used in numerous federal cases involving major U.S. and foreign entities.

Please advise if Defendant will stipulate to our original draft.

Lana C. Marina, Esq.  
 WINSTON & STRAWN LLP  
 Telephone: (212) 294-6626  
 Facsimile: (212) 294-4700

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-----Original Message-----

**From:** Manavinder S. Bains  
 [mailto:msbains@powleylaw.com]  
**Sent:** Monday, September 26, 2005 3:48 PM  
**To:** Marina, Lana C.  
**Subject:** RE: Spam RE: Google Inc. v. Froogles;  
 CV-05-1779(TCP)(ETB); Our Ref. No. 246.1

Thank you Lana.

Kind regards.

-Manavinder



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-----Original Message-----

**From:** Marina, Lana C.  
[mailto:LMarina@winston.com]  
**Sent:** Monday, September 26,  
2005 3:37 PM  
**To:** Manavinder S. Bains  
**Cc:** Richard, Virginia; Bridges,  
Andrew  
**Subject:** Spam RE: Google Inc. v.  
Froogles; CV-05-1779(TCP)(ETB);  
Our Ref. No. 246.1

Dear Manavinder:

We are in the process of  
reviewing your proposed  
changes.

Lana C. Marina, Esq.  
WINSTON & STRAWN LLP  
Telephone: (212) 294-6626  
Facsimile: (212) 294-4700  
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-----Original Message-----

**From:** Manavinder S. Bains  
[mailto:msbains@powleylaw.com]  
**Sent:** Monday, September  
26, 2005 3:35 PM  
**To:** Marina, Lana C.  
**Cc:** Robert L. Powley;  
Nancy Juetter; Ananya Dash;  
Casimir Cook  
**Subject:** Google Inc. v.  
Froogles; CV-05-1779(TCP)  
(ETB); Our Ref. No. 246.1

Dear Ms. Marina:

Further to Nancy Juetter's  
email to you of  
September 20, 2005,  
please let us know when  
we may expect to receive  
your office's comments  
regarding the protective  
order for the above-  
referenced matter.

Thank you.

Manavinder S. Bains

Law Office of  
Robert L. Powley  
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